

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ASSEMBLY POINT AVIATION, INC.,

Plaintiff,

-against-

RICHMOR AVIATION, INC. and MAHLON W.  
RICHARDS,

Defendants.

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**AFFIDAVIT OF**  
**JOHN J. HENRY**

Case No. 1:13-CV-298  
(FJS-RFT)

STATE OF NEW YORK     )  
                                      ) ss.  
COUNTY OF ALBANY     )

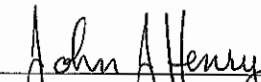
JOHN J. HENRY, being duly sworn, hereby deposes and says:

1. I am a member of Whiteman Osterman & Hanna LLP, counsel for Plaintiff Assembly Point Aviation, Inc. in this matter.

2. I respectfully submit this affidavit in opposition to the motion of Defendants Richmor Aviation, Inc. and Mahlon W. Richards seeking to dismiss Plaintiff's complaint in this action.

3. Attached as Exhibit A is the charter contract between Richmor Aviation, Inc. and SportsFlight Air, Inc., dated June 14, 2002, for the exclusive use of Plaintiff's aircraft, N85VM.

4. For the reasons set forth in Plaintiff's accompanying memorandum of law, Plaintiff respectfully requests that this Court deny Defendants' motion to dismiss in its entirety.

  
JOHN J. HENRY

Sworn to before me on this  
31<sup>st</sup> day of May, 2013

  
Notary Public

LISA D. RICE  
Notary Public, State of New York  
No. 01RI4805553  
Qualified in Rensselaer County 14  
Commission Expires May 31, 2014

# EXHIBIT A

06/08/2007 15:00

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RICHMOR CHARTER

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571-239-0363



# Richmor Aviation



TO: SportsFlights Airways, Inc.  
156A Depot Rd  
Huntington, NY 11746  
Attn: Don Moss

FROM: Richmor Aviation, Inc.  
1142 Route 91  
PO Box 423  
Hudson, NY 12534

Date: June 14, 2002


The following, with addendum constitutes the charter contract

## Charter Contract

Charterer: SportsFlights Airways, Inc as Authorized Agent for DynCorp, Inc  
Carrier: Richmor Aviation, Inc  
Aircraft: Gulfstream IV  
Registration: N85VM  
Configuration: 10 passenger seats  
Crew: as approved  
Date: May 6, 2002 - November 6, 2002  
Schedule: As required with a guarantee of 250 hours during this period  
Charter Price: As outlined in Appendix "A"

The charter price is based on performing the flights during agreed period of time only, and the flights are subject to obtaining traffic rights/government approvals/overflight permits. Richmor Aviation, Inc. agrees that the flights are subject to be operated under a letter of public convenience.

Charter Contract between Richmor Aviation, Inc. and Sportsflight Airways, Inc.  
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**ADDENDUM TO CHARTER CONTRACT BETWEEN RICHMOR AVIATION, INC. (RAI) AND SPORTSFLIGHTS AIRWAYS, INC. (SAI).**

The following additional provisions are included in the contract agreement:

1. The liability insurance shall include as additionally insured Meta Bittenheim DBA AirMarketing Services, SportsFlights Airways, Inc and Dyncorp, Inc. RAI shall obtain and maintain throughout the term of the contract, aircraft liability insurance in an amount not less than a combined single limit bodily injury and property damage of Two hundred million (\$200,000,000) (See Appendix A) each occurrence including passenger legal liability. A Certificate of Insurance evidencing the foregoing and providing that such insurance shall not be reduced and/or terminated without 30 days prior written notice to SAI and shall be furnished to SAI upon execution hereof and prior to operation of the Aircraft. In addition, RAI, to agrees to maintain and keep in full force during the contract term hereof, insurance for aircraft liability and war risk aircraft liability, non owner aircraft liability, premises liability, incidental contractual liability, aircraft medical expenses \$5000 each person, baggage and personal effects \$2500 each passenger, Mexican liability policy (if applicable), trip interruption, flight continuation expenses \$2000 per passenger (if available).
2. RAI shall deliver the aircraft in airworthy condition with appropriate certificates or other documents establishing the valid and current registration of the aircraft with the Federal Aviation Administration and Certificate of Airworthiness as issued by the Federal Aviation Administration. RAI shall maintain the aircraft under the current applicable FAA (part 135) rules. RAI as operator of the aircraft during the term of this agreement shall be responsible for, at its expense, the maintenance, repair, and periodic inspection of the aircraft, inclusive of the engines, instruments, airframe, and each of its other components and subsystems, and accordingly, keep and maintain the records of same, all in conformity with applicable FAA regulations. The price to SAI includes all fuel, fluids, etc., necessary to operate the aircraft, including the salaries of the pilots and crew and all insurance premiums except as noted in Appendix "A"
3. RAI shall make appropriate airport arrangements consistent with SAI's schedule, including but not limited to dispatch and incoming and outgoing clearances.
4. Should safety dictate mandatory de-icing before the flight, the cost of such deicing will be paid by SAI. Whether de-icing is required shall be determined by the pilot, in his sole discretion.

5. RAI warrants and represents that (i) it has the right, power and authority to enter into an agreement and to perform its obligations hereunder and (ii) the aircraft is operated under the authority of a certificate issued by the appropriate authorities and is otherwise in compliance with all the applicable domestic and international regulations.
6. RAI will promptly notify SAI of any force majeure condition, which may result in a failure of the aircraft and shall use its best efforts to find suitable backup aircraft. In the event of such termination, RAI shall refund to SAI any outstanding credit on their account.
7. In the event that any certificate, permit or authorization relating to the aircraft is revoked, suspended or expires during the contract through no fault of RAI, and RAI is unauthorized to operate aircraft or to furnish backup aircraft in accordance with the provisions above, then this agreement shall automatically terminate.
8. RAI shall be responsible for and promptly discharge any fee, fine, levy, penalty, or any other claim or demand which may be imposed or asserted as to the aircraft by any private or governmental agency or person during the term hereof relating to RAI operation of the aircraft. (See Appendix A)
9. Each party hereto agrees and understands that each clause, term, and condition of this agreement represents their entire understanding; and, that in entering into this agreement, neither party hereto relies on or has considered any representation or supposed understanding not expressly set forth herein.
10. Each party hereto agrees and understands that the terms and conditions of this agreement are to be construed and interpreted in accordance with the laws of the State of New York and are deemed to be applicable hereto in the resolution of any dispute, which may arise herein.
11. The terms of this agreement expires on November 6, 2012.
12. SportsFlights Airways, shall pay Richmor Aviation, Inc. the fees and charges in accordance with Richmor Aviation, Inc.'s invoices.

**ACCEPTED AND AGREED:**

**RICHMOR AVIATION, INC.**

By: Martin P. Richman  
An Authorized Representative

**SPORTSFLIGHTS AIRWAYS, INC.**

By: Donald J. Weiss  
An Authorized Representative

RICHMOR AVIATION, INC.

APPENDIX "A"  
CONTRACT FEE STRUCTURE

The following is the fee structure for the contract with SportsFlights Airways, Inc

Guarantee of Two hundred and fifty (250) flight time hours within six (6) months and the option to do fifty (50) hours per month thereafter

Positioning rate to/from Washington (IAD) \$5,000.00/hr

Charges per hour of actual flight time @ \$4,900.00/hr

Extra crew charges \$800/per crew member per day

Flight Attendant no daily charge

Crew expenses Government per diem per crew member per 8-10 day rotation plus airline expenses to swap crews beyond 10 days.

Additional charges: (billed at actual costs)

- Weather related items: i.e.: aircraft deice/hangar etc.
- Catering
- Passenger ground transportation
- Flitephone
- Landing/ramp/facility use fees
- International handling/overflights/permits, etc (please note that in some cases this can take up to 12 mos. to secure.)
- Fuel surcharge: RAI reserves the right to implement this as fuel costs increase.
- Additional \$100,000,000 liability insurance.
- Any fee, fine, levy, penalty, or any other claim or demand which may be imposed or asserted as to the aircraft by any private or governmental agency or person during the term hereof relating to RAI operation of the aircraft


SportsFlights Airways, Inc.

Agreed: 

Date: 6/18/02

NOTE: Any taxes due are the responsibility of SportsFlights Airways, Inc

Charter Contract between Richmor Aviation, Inc. and Sportsflight Airways, Inc.  
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Richmor Aviation, Inc. will not be held responsible for any delay: caused by strikes, civil strife, weather, acts of God, or unforeseen mechanical delays

Richmor Aviation, Inc. will maintain liability insurance in the amount of \$200,000,000 USD and will operate the charter in accordance with FAR 91 and all applicable Federal State and Local ordinances as defined by the U.S. Department of Transportation and the U.S. Federal Aviation Administration and under the provisions dictated under the letter of Public Convenience as provided

Cancellation Policy

1. If cancellation occurs more than 12 hours prior to scheduled aircraft dispatch then no charge except as noted in Item 4.
2. If cancellation occurs less than 12 hours prior to scheduled aircraft dispatch then no charge except as noted in item 4.
3. If cancellation occurs after aircraft has been dispatched then actual flight time incurred at \$4900.00 per hour plus charges as noted in Item 4.
4. Reimbursement of all expenses incurred, subject to providing appropriate evidence of such expenses, for permits, handling and logistics on domestic and international flights as required

Payment Terms

Confirmation of contract requires a good faith deposit of 10% on guaranteed hours (147,000.00) and payment of invoices within 30 days after date of invoice. SportsFlights Airways, Inc. agrees to pay an additional amount equal to one and one half percent (1 1/2%) interest per month on balances which are past due thirty-one (31) days or reasonable attorney's fees on the cost of collection.

RICHMOR AVIATION, INC.

Agreed by:

Date:

6/14/2002

SPORTSFLIGHTS AIRWAYS, INC.

Accepted by:

Date:

6/18/02